

A Global View of the University's Duty of Care Obligations

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**There are no foreign lands.
It is the traveler only who is foreign.**

—ROBERT LOUIS STEVENSON (1850-1894),
SCOTTISH NOVELIST, POET, AND TRAVEL WRITER

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Abstract: As more students, faculty, and staff members travel, work, and live abroad, higher education institutions face the question of what their responsibilities are to their constituents. Duty of care refers to the legal obligation of organizations and individuals to treat others and the public in such a way as to avoid the risk of foreseeable injury. Employers have a duty of care obligation for the health, safety, and security of their employees; likewise, colleges and universities have an obligation to all of their stakeholders who are traveling or studying internationally. This article highlights the many different risks and duty of care obligations that face colleges and universities specifically, including student versus faculty and staff risks, past international incidents, international campus risks, and reputational risk. The authors also outline steps that any institution can take to ensure it has processes in place to meet its duty of care obligations and protect its employees and students.

Introduction

Etymologically, the term “university” (from the Latin “*Universitas*”) connotes universality and a global mindset. To embrace this world view, university faculty exchange ideas and scholarship with others around the world. In the 17th century, Erasmus frequently traveled from his universities in Rotterdam (the Netherlands), Leuven (Belgium), and Basel (Switzerland) to other countries in Europe to visit his contemporary academic colleagues and students for discussions and lectures. Traveling on the roads in those days was more laborious and probably much more hazardous than today. However, 21st century globalization has brought new and increased risk for students and university employees who similarly travel for educational purposes. It also brings in a new set of challenges for the universities that must care for them.

The legal notion of “duty of care” implies that individuals and organizations have legal obligations to act toward others and the public in a prudent and cautious manner to avoid the risk of reasonable foreseeable injury to others.

Employers have a duty of care obligation for the health, safety, security, and well-being of their employees as they fulfill their work obligations and for their customers who use their products or services. The specific responsibilities of employers for the duty of care of employees who are traveling abroad have recently been documented for corporations.¹ In spite of the fact that universities have similar obligations as corporations to their employees, how the notion of duty of care applies to them and their stakeholders remains mainly unexplored to date. The purpose of this paper is to raise awareness and explore the pertinent issues associated with the duty of care responsibilities of universities for their students and employees, including faculty, staff, and administration, who are increasingly traveling abroad.

First, we identify who is generally traveling abroad on behalf of the university and the risks that this may entail.

Second, we elaborate on the special issues resulting from international campuses, whether a result of a partnership with a foreign university or a borderless campus. Third, we focus on how a university can assume its duty of care responsibilities. Finally, we make a number of practical recommendations for university administrators with regard to duty of care. The university's lack of awareness about this issue and its failure to understand and assume its duty of care obligations can have dramatic consequences for them in terms of legal liability, reputational risk, and even educational program continuity.

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At-Risk University Travelers

Travelers are exposed to increasing health, safety, and security risks as they leave their home country and find themselves in unfamiliar surroundings. Within a university context, travelers usually consist of students, faculty, administration, and staff. Students differ from faculty, administration, and staff in the sense that the former are customer stakeholders and the latter are employee stakeholders of the university. But when these constituents travel on behalf of the university, for whatever reason, the educational institution bears responsibility for the risks they may encounter. These risks are, of course, present in domestic travel, but can be more difficult to assume for international travel.

The major reasons for outbound international travel of students include participation in sport teams activities, cultural collegiate performances, study abroad, and international internship programs. International students pursuing a degree at a university outside of their home country make up the majority of the inbound international student travel. Reasons for international faculty travel consist mainly of faculty traveling with students as chaperones to university-related events, teaching abroad, conducting research abroad, conference attendance, and approved sabbatical leaves away from the university. University administration and staff mainly travel abroad for recruiting purposes, conference attendance, speaking engagements, university partnerships with schools abroad, and other general university business. The fact that the university deals with different traveling constituencies, who travel for different reasons and to different locations for short- or long-term periods of time, complicates the threat and risk profile and the university's duty of care responsibilities.

Employers have varied duty of care legal and moral obligations for their traveling employees and must plan accordingly. The risks encountered during international work-related travel range from "natural" to "human-made" situations and entail a wide range of exposures (see Figure 1). Although some of these risks are predictable because of the location, others are more uncertain. In either case, though, the unfamiliar environment encountered by the traveling person poses the greatest threat.

FIGURE 1: RISKS ASSOCIATION WITH INTERNATIONAL TRAVELERS²

- Terrorism, kidnapping, hijacking, and piracy
- Lawlessness, violent crimes, threats, opportunistic crime, organized crime, and imprisonment
- War, insurgency, political upheaval, coups, and civil unrest
- Natural disasters, such as hurricanes, floods, tornados, storms, mudslides, earthquakes, tsunamis, snowstorms, extreme weather conditions, and drought
- Infectious diseases and pandemics, such as influenza, SARS, and Avian flu
- Travel-related infections, such as malaria, respiratory infections, hepatitis, typhoid fever, dengue fever, and other medical emergencies
- Lack of air quality, rural isolation, language, and cultural estrangement
- Vehicle accidents and airline catastrophes
- Hotel fires
- Common travel problems, such as lost luggage, invalid/expired/forgotten passports, pickpockets, and scheduling delays
- Lack of legal/administrative compliance (i.e. immigration and visa challenges)

Contrasted with corporations, which mainly focus on the duty of care for their employees, universities seem to focus far more on their traveling students than caring for their employees. This may be the case because third-party payers, especially parents of students and scholarship organizations, put a much greater emphasis on the health, safety, and security of students when they are traveling abroad under the auspices of the university or when deciding where to send them to study at a foreign university. Because students tend to be younger (and often more impetuous and inexperienced) and third-party payers more demanding, the university usually has a process in place to pre-approve student trips and an insurance program to protect against certain risks. They also develop relatively clear and concise safety procedures for incoming international students. However, the university's duty of care obligation extends far beyond students. The university's employees—faculty, staff, and administration—also frequently travel abroad, whether for teaching, research,

sabbaticals, recruitment, or general university business. For these employees, the university seems rather unaware of the legal and fiduciary scope of its duty of care obligations. Nevertheless, the risk encountered by traveling university employees is great.

Risks of International Campuses

A special area of concern in terms of duty of care obligations is the safety and security risks associated with international branch campuses. Historically, students from developing countries have attended universities in Europe, Australia, and North America. In the past decade, many Western universities have opted to establish campuses in foreign countries in order to deliver their services to these students and study abroad opportunities for students from their home campuses. They have basically done so through international joint ventures with existing universities abroad or through the establishment of borderless campuses. The internationalization of universities has created additional risks for international and transnational students studying at a “foreign” university, students participating in a study abroad program, and faculty and staff (and their families) working as faculty, staff, and administrators in the host countries of these borderless campuses.³ It is estimated that US-based universities operating international branch campuses currently have about 2,000 expatriate faculty and staff working and living abroad, often in high-risk areas.⁴ These internationalization trends in higher education present new risks for students, employees, and their families who accompany them. In other words, universities can no longer ignore their duty of care obligations.

University-Related Duty of Care Issues

In general, there is a lack of awareness on the part of employers with regard to their duty of care obligations for employees who travel abroad. While certain industries, by the very nature of their activities, may be better prepared than others, such as financial institutions, construction and mining companies, and international non-governmental organizations (NGO), for many employers the duty of care obligation for employees who travel internationally does not appear on their radar screens. Once an incident happens, though, they can no longer operate with the hope that it can't or won't happen to them. This reason-

ing also seems to apply to universities. While universities provide insurance programs for the use of their students traveling abroad, they have shown far less understanding of their responsibilities for the duty of care of traveling faculty, staff, and administrators. It often takes an incident and the management of a crisis to take a closer look at their legal duty of care obligations. A few of these incidents are illustrated in Figure 2.

FIGURE 2: UNIVERSITY INCIDENTS

- 2010: A group of 12 students from Lynn University in Florida traveled to Haiti to work on a mission project. A massive earthquake hit, and the lines of communication were limited or unavailable. The school worked with a partner organization to airlift the students to safety. Nearly a week after the quake, the university could not account for several students; the earthquake took the lives of two faculty members and four students.
- 2008: An admissions representative from Willamette University traveled to India for recruitment fairs. A terrorist attack occurred in the hotel where the employee was scheduled to stay. Administrators quickly found her travel schedule, ensured she was safe, and flew her back to the United States as soon as possible.
- 2007: Eight University of Washington students were evacuated from Ghana due to an illness. The students cited poor planning by the trip advisors and lack of appropriate food as the cause of the illnesses and fatigue. The University of Washington investigated the trip, the faculty members, and the program/department.

Depending on the statutes and case law of the different countries, employer duty of care legal obligations are usually found in the countries of North America, Europe, Australia, and New Zealand. The general legal principle is based on the employer's obligation to protect the health, safety, and security of its employees even when they are working abroad. A negligent failure to plan—and to implement a risk management plan—can make an employer liable for foreseeable harm inflicted on the employee. Yet some employers in the Western world view their duty of care obligations towards their employees in a much larger corporate social responsibility framework. Socially responsible organizations view protecting their traveling employees, wherever they travel and work in the

world, as doing the right thing for their workforce. It is not that these employers are necessarily more moral than others, it is simply that they have come to understand that it makes good business sense to do so. In line with risk management practices, prevention is not only less expensive, it also protects organizations from damages to their reputation and threats to business continuity.

Such thinking has not yet infiltrated some universities with international programs. Some institutions remain focused on providing insurance against student and faculty risks rather than take on a more holistic, proactive view of risk management, mitigation, and prevention. With the exception of international students who study at the home campuses of universities (and are “in sight”), there is almost no assistance available for students and university employees when they are traveling and residing abroad for their educational and work purposes. This puts universities at great legal liability and reputational risk.

University Duty of Care Responsibilities

Universities, similar to organizations, have specific challenges when it comes to assuming their duty of care obligations. These range from lack of awareness, know how, a flawed view that they are not at risk, a focus on cost containment, and a lack of coordination among the university’s decisions makers to implement an integrated risk management model. Yet in order to assume their duty of care obligations, universities should develop an integrated risk management strategy with regard to duty of care. The duty of care integrated risk management strategy (see Figure 3) is comprised of eight steps in accordance with the “Plan-Do-Check” cycle.

- ♦ **Plan:** Key stakeholders are identified and the framework for the employer’s duty of care responsibilities is defined for the organization.
- ♦ **Do:** The duty of care plan is implemented and tools are deployed.
- ♦ **Check:** Duty of care implementation efficiency is measured through a set of performance indicators.

Universities face a number of specific challenges, including lack of awareness, a perception that they are not at risk, cost containment, and a lack of coordination.

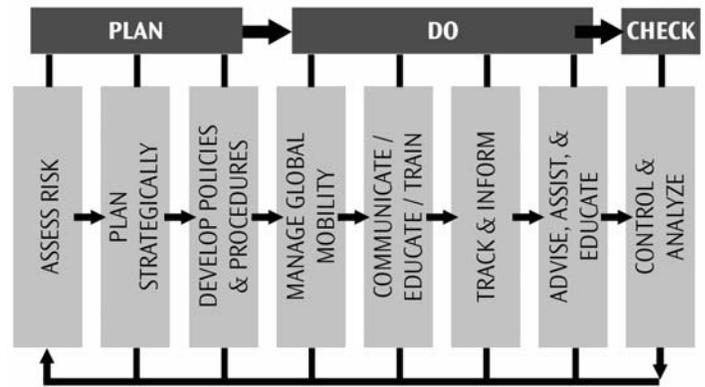


FIGURE 3: DUTY OF CARE INTEGRATED RISK MANAGEMENT STRATEGY

“Plan” Phase

The “Plan” phase of the duty of care integrated risk management strategy consists of three steps: assess the risks for the organization and the employees (step 1), plan strategically how to assume duty of care responsibility (step 2), and develop appropriate policies and procedures (step 3).

Step 1—Assess Risk: Assess organization-specific health, safety, and security risks in the different locations where employees are assigned or travel for work and understand the organization’s duty of care obligations.

Step 2—Plan Strategically: Develop an integrated risk management strategy, including both an incident management plan and an ongoing duty of care process, so that the organization effectively and efficiently can assume its duty of care obligations.

Step 3—Develop Policies and Procedures: Develop a clear policy that governs those who are traveling and working abroad, both short- and long-term, and consider how the organization’s international assignment and worldwide travel policies assist in keeping employees healthy, safe, and secure.

“Do” Phase

The “Do” phase of the duty of care integrated risk management strategy consists of four steps: manage employee mobility (step 4); communicate, educate, and train (step 5); track and inform (step 6); and advise, assist, and evacuate (step 7).

Step 4—Manage Mobility: Review how your organization oversees the international mobility of employees and their dependents crossing borders as part of their work as international assignees or international business travelers.

Step 5—Communicate, Educate, and Train: Ensure that the risk management strategy, including policies and procedures, is appropriately communicated to all managers and that employees are appropriately prepared for travel and international assignments before they leave. Share policies and procedures with your public relations and communications staff so they are prepared to answer questions and address concerns.

Step 6—Track and Inform: Know where your employees are at any given time and have ways to communicate proactively with them if a situation changes or in the event of an emergency. Identify key spokespersons at the institution who will communicate with both internal and external audiences.

Step 7—Advise, Assist, and Evacuate: Provide ongoing guidance, support, and assistance when employees are abroad and find themselves in unfamiliar and risky situations. Utilize media tools, including social media, to provide updates, and monitor the media for helpful information.

“Check” Phase

The “Check” phase of the strategy consists of control and analysis of the duty of care risk management plan (step 8).

Step 8—Control and Analyze: Ensure employer/employee compliance. Track and analyze data to improve the efficiency and effectiveness of the strategy.

Reputational Risk

As Benjamin Franklin once said, “It takes many good deeds to build a good reputation, and only one bad one to lose it.” From a public relations standpoint, international travel and the recruitment of international students provides new challenges for colleges and universities. Marketing efforts tout the “globalization” of campuses through study abroad options, percentages of international students and faculty, and opportunities for international travel, research, and study. In a 2001 assessment of Australia’s business programs, higher education was identified as one of the country’s “biggest and most important services exports.”⁵

The importance of international travel to the image of a college or university and the quality of the experience for faculty, staff, and students places a tremendous obligation on managers and communications professionals. International emergencies or missteps in communications can result in long-term or even permanent damage to the institution’s reputation and image.

Managing reputational risk goes beyond simply crafting reactive public relations campaigns should an event occur. True strategic planning involves a more proactive approach where the institution considers, tests, and plans for different scenarios through defined channels of communications. Coordinated action between senior administrators and their campus public relations or communications departments is the best way to manage and mitigate risk related to international travel and duty of care. Taking all key constituencies into account and planning for risks

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before they arise is the ultimate goal of administrators and managers.⁶

The first step in managing reputational risk involves an assessment of the campus' current reputation. What do key audiences—current students, faculty, staff members, members of the greater community, and even competitors—think about the institution? Does the perceived reputation among senior administrators reflect the reality of its audiences? This is known as the “reputation-reality” gap.⁷ Once a generally accepted reputation and image is established, decision makers can effectively weigh duty of care obligations with reputation management considerations.

Recommendations for University Administrators

This paper has focused on raising awareness of the university's duty of care obligations with regard to the international travel of their students and employees and recommends that university administrators develop and implement an integrated risk management strategy for international travel duty of care. Employers who become aware of their duty of care obligations are often at a loss as to where to start. Here are some guidelines:

1. Get the internal university stakeholders together.

Many different people on campus have a stake in the duty of care process due to their functional responsibilities. These internal stakeholders all play a role in the university's duty of care responsibility at certain times, whether during crisis management for an incident or the duty of care planning phase. Stakeholders include the heads of university administration, public relations, human resources, campus safety and security, international programs, campus travel, and the deans of the various schools or departments. Each of these stakeholders views duty of care responsibilities from the perspective of their own disciplinary function, and all have different decision-making authorities. Together, however, these stakeholders can elevate the duty of care protection to the level of the university president and the board of trustees.

2. Set up a university-wide duty of care task force.

The goal of this task force, made up of the internal stakeholders, is to raise overall awareness of the university's duty of care obligations for traveling students, faculty, and

administration and benchmark the status of its current processes. Before developing an integrated duty of care risk management strategy, the university must assess its risk profile, identify gaps and blind spots, and formulate strategic duty of care objectives that serve its specific needs.

3. Manage your reputational risk.

Universities should ensure that public relations professionals are part of the task force that evaluates duty of care obligations. It is up to these professionals to advise administrators and managers of the reputational risk involved in overseas travel and mitigate this risk with concrete public relations solutions. This includes defined communication channels for the media, the internal campus community, local and international authorities, and the families of those affected by an incident.

Proactive risk strategies revolve around the idea of coordinated action. Key questions to address include:

- Who is the designated spokesperson for the university if an incident occurs? If senior administrators are identified as spokespersons, have they been given appropriate media training to field questions and make important announcements?
- Are talking points defined for various scenarios and for different audiences? Can they be quickly referenced in a crisis situation?
- Does the college or university have a coordinated action plan for internal audiences, including the use of e-mail blasts, text messaging, designated web pages, and new media tools (like Twitter)?
- If the institution utilizes contracted insurance, risk management, or communications agencies, do senior administrators know who their primary contacts are at these organizations? Are roles clearly defined between them?

The ultimate objective is the development of a coordinated response should a crisis situation occur. Everyone should be on the same page to make the best decisions and provide the necessary information to ensure those affected receive the assistance they need.

4. Develop, implement, and evaluate your strategy.

Do not wait for an incident to happen with your students and university employees. Proactively develop a strategy with the assistance of your duty of care task force. Get the assistance of reputable vendors who can provide insurance as well as assistance and who have a track record of serving the traveling employees of corporations.

The failure of university administrators to understand and assume duty of care obligations can have dramatic consequences for universities in terms of legal liability, reputational risk, and even program continuity.

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Dr. Claus has been published widely in academic and professional journals on subject matters related to global human resources (HR), performance management of multinational companies, and global workforce employer duty of care issues. A frequent keynote speaker at national and international HR conferences, she is the co-author of a leading textbook, *International Human Resource Management* (3rd edition), by Briscoe, Schuler, and Claus.

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Mr. Yost previously served as an account manager for the Statesman Journal, Gannett, Inc.'s subsidiary in Salem and was a legislative assistant in both the Oregon House of Representatives and the Oregon Senate. He has also worked at public relations firms in Oregon and Washington.

He currently serves on the board of the Public Relations Society of America (PRSA) Oregon Capital Chapter and will become president of the chapter in 2010. He also serves as the professional development chair for the board of the American Marketing Association (AMA) – Oregon Chapter. He completed the Leadership Portland program in 2007 and served for two years as a co-chair for the "Cultural Arts and Creative Economy" program day. Mr. Yost also serves as the publicity chair for the American Cancer Society's Relay for Life of Portland. During the 2009 relay, donations tripled from the previous year, and the event earned a prestigious "Explosive Growth Award" from the American Cancer Society.

Mr. Yost holds a bachelor's degree in business administration from Gonzaga University and an MBA from Willamette University. He also spent a semester studying international business and global marketing in Copenhagen, Denmark. He has received two Public Relations Spotlight Awards for campaigns designed for the Willamette MBA and a "Gold Award" from the journal, *Higher Education Marketing*, for the "Why Willamette?" campaign in 2008-2009. He was recognized as the Atkinson Graduate School's Administrator of the Year in 2008.

Endnotes

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We need to restore the full meaning of that old word, duty.

It is the other side of rights.

—PEARL BUCK (1892–1973), AUTHOR

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